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Supreme Court of the United States

CARROLL DUNSCOMBE, PETITIONER,

VS.

A. O. KANNER AS JUDGE OF THE CIRCUIT COURT FOR MARTIN COUNTY, STATE OF FLORIDA, RESPONDENT.

PETITION FOR CERTIORARI AND BRIEF.

T. T. OUGHTERSON,
Attorney for Petitioner.

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PETITION FOR CERTIORARI AND BRIEF.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court for the United States:

Your petitioner, Carroll Dunscombe, a citizen of Florida, prays for the issuance of a writ of certiorari to the Supreme Court of the State of Florida to review a final judgment of the said Supreme Court, affirming a decree of the Circuit Court for Martin County, entered on November 17th, 1947, and its order denying a petition for rehearing entered on November 24th, 1947.

STATEMENT OF MATTER INVOLVED.

An important question appears as to whether the large number of federal chartered corporations, acting in a proprietary capacity, are immune from the laws of the states in which they enter and do business and also immune from state excise taxes levied against foreign corporations as a

class and if the charter of such a corporation restricts it to operate within a defined territory, if it can lawfully do business beyond the limits of such restricted territory and sue to enforce its contracts so made or if it had any power to bring a suit in any court to recover money.

BASIS OF JURISDICTION.

Pursuant to Rule 38 the petitioner files his statement of the basis on which he claims the Supreme Court of the United States has jurisdiction to review the final judgment of the Florida Supreme Court upon certiorari.

That Title 28, Section 344-b, gives this court jurisdiction to review any final decision where immunity under a federal law is granted or denied by a state court of final jurisdiction.

B.

That the statute of Florida, the validity of which is involved is Section 613, Florida Statutes, 1941, requiring foreign corporations that want to do business in the state to first register and pay the excise tax, appoint an agent upon whom process can be served, and defines as a foreign corporation, as any that are not chartered by the State of Florida.

C.

The statute of the State of Florida, the validity of which is involved in Section 58.01, Florida Statutes, 1941, and which statute requires a non resident plaintiff to post a cost bond within thirty days after demand therefor and for non compliance thereof, the action shall be dismissed.

D.

The federal statute involved is Title 12, Section 1148, Federal Code, under which Regional Agricultural Credit

Corporation of Washington, D. C., with main place of business in Kansas City, Missouri, was chartered and it is necessary to construe said act in order to determine:

1. If said corporation was authorized to bring a suit to recover money in any court;

2. If said federal corporation was authorized to do business in Florida;

3. If said federal corporation was ever granted any immunity from state taxation, if it did business in a foreign state;

4. If said federal corporation was ever granted immunity from the laws of the state in which it might do business or bring actions therein to enforce its claims.

Regional instituted a suit in the state circuit court against the petitioner, on a conditional note. Petitioner obtained proof from the Florida Secretary of State that Regional had not complied with Sec. 610.03 and moved to dismiss for non compliance. Petitioner also moved Regional be required to post the statutory cost bond required of non resident plaintiffs under Sec. 58.01, gave the plaintiff notice of such demand and after thirty days, moved the court to dismiss the suit on both grounds and also filed his demurrer on the grounds the charter of the plaintiff did not authorize it to bring a suit for money and that it had no authority to do business in Florida.

The trial judge denied the motions and overruled the demurrer and thereupon the petitioner sought a writ of prohibition to prevent the trial judge from proceeding further or requiring him to answer or plead. Under the state law and the state Supreme Court's construction of it, a trial judge has no discretion but must dismiss such actions where the non compliance has been called to its attention.

No reasons were given for denying the motions to dismiss by the trial court, nor were any reasons or grounds stated for denying the petition for the writ of prohibition in the State Supreme Court, a petition for rehearing was filed to make such grounds appear and was denied, but apparently the trial judge and the Florida Supreme Court accepted the contention of Regional, that because it was chartered by Congress it was immune from state taxes and immune from the laws of the state in which it did business, under the claim that being chartered by Congress it was not a foreign corporation, regardless of the Florida law that designates any corporation not chartered under the laws of Florida, a foreign corporation, and regardless of the fact it is a proprietary corporation organized for profit, wholly owned by RFC that is also federal corporation, organized for profit and neither Congress nor the State of Florida has granted such federal corporations any immunity from state taxation or any immunity to comply with the laws of the state in which they do business or bring suits to enforce their said claims.

That the decision so rendered was made by the highest court of the state in which said decision could have been made and is a final decision.

Cases that petitioner believes support the jurisdiction of this court are as follows:

U. S. Shipping Board v. *Sullivan,* 261 U. S 146.
Federal Land Bank v. *Priddy,* 295 U. S. 229.
Egyptian Arabic v. *Micheau,* 239 U. S. 737.
RFC v. *Barnett,* 98 F. 2d 190.
U. S. v. *Brown,* 41 Fed. Supp. 838 (Fla.).
Alabama v. *King,* 314 U. S. 1, 140 A. L. R. 615.
Flint v. *Stone Tracy,* 220 U. S. 107.

ASSIGNMENT OF ERRORS
Or
QUESTIONS INVOLVED.

FIRST QUESTION.

Did the trial and appellate court err in holding that Regional was not a foreign corporation and required to file a cost bond as a condition it maintain a suit in the Florida court?

SECOND QUESTION.

Did the trial and appellate court err in holding that Regional was not a foreign corporation and required to register, pay the state excise tax and appoint an agent upon whom service of process could be made, if it wanted to do business in Florida and use its courts to enforce its claims?

THIRD QUESTION.

Did the trial and appellate court err in finding that Regional was immune from state taxation or the laws of the state, with no proof to support such claim or anything in its charter that granted such claimed immunity?

FOURTH QUESTION.

Did the trial and appellate court err in holding that Regional was authorized to do business in Florida and bring suit to recover money and be allowed to bring suits in the Florida courts to enforce its unlawful claims?

REASONS FOR GRANTING THE WRIT.

1. That the State Supreme Court decided a substantial federal question, not heretofore determined by the United States Supreme Court.

2. That the State Court decided a substantial federal question in a way not in accord with the applicable decisions of the United States Supreme Court.

3. That the State Court could not have affirmed the decision on local grounds because all the state decisions were in favor of the petitioner.

4. That the State Court erroneously construed Title 12, Sec. 1148, because:

a. Neither that act nor any other act granted the plaintiff any immunity from taxation or the laws of the state, in which it might do business.

b. Neither that act nor any other act granted the plaintiff any immunity from complying with the laws of the state in which it sought to bring a suit in the state court.

c. That plaintiff corporation was not organized or chartered under the laws of Florida and therefore in the eyes of the Florida courts was a foreign corporation.

5. That it is important that all states know, if the great number of federal corporations, chartered by Congress and acting in a proprietary capacity and which have been granted no immunity from State taxation or compliance with the laws of the state in which they seek to do business, have to pay such reasonable taxes or comply with reasonable conditions as do the same private corporations, with which they are in competition.

23 Amer. Jur. 22, Sec. 10, note 19:

"The United States Supreme Court has not passed on the right of a state to treat federal corporations as foreign and apply the same rules as it does to corporations created by other states."

Wherefore, petitioner respectfully prays that a writ of certiorari be issued and directed to the Supreme Court of Florida at Tallahassee, Florida, commanding said court to certify and send up to this court, on a day certain, to be hereinafter stated, a record of all the proceedings in that case entitled: *State of Florida ex rel. Carroll Dunscombe, Petitioner,* v. *A. O. Kanner, as Judge of the Circuit Court for Martin County, Florida,* to the end that said case may be reviewed by this court as provided by Title 28, Sec. 344-b, and the judgments of the said Circuit Court and Supreme Court of Florida be reversed and the case remanded to said State Circuit Court, with instructions to dismiss the complaint of Regional, as by state law in such cases made and provided.

T. T. Oughterson,

Attorney for Petitioner.

State of Florida, County of Martin:

T. T. Oughterson, first being duly sworn, says that the foregoing petition is filed in good faith and not for the purpose of delay and that he believes that it is necessary to construe the act of Congress creating Regional Agricultural Credit Corporation, in order to determine the questions involved and raised by the foregoing petition.

T. T. Oughterson.

Sworn to and subscribed before me this.....day of January, 1948.

Ruth Ham,

(Seal) Notary Public.

BRIEF OF PETITIONER.

NATURE OF CONTROVERSY.

Regional Agricultural Credit Corporation of Washington, D. C., with main place of business in Kansas City, Missouri, and which will hereinafter be designated as Regional, instituted a suit at law in the Circuit Court for Martin County, Florida, on a conditional promissory note for advances it claimed to have made in Florida.

The Florida law, Section 613, 1941 Statutes, requires a foreign corporation that wants to do business in the state to first register with the Secretary of State, file a copy of its charter and pay the same fee as corporations organized under state law are required to do, for the privilege of doing business in such state and for the use of its courts in the enforcement of any claims that arise from such activity. This law 613.07 holds that unless such a corporation be organized under the law of Florida, it is held to be a foreign corporation.

Section 58.01, Florida Laws, 1941, requires a non resident corporation to post a cost bond as a condition it maintain a suit in [illegible]ate court, upon the demand of the defendant, and aft[illegible] days notice of such demand, if the bond has not b[illegible] posted, the trial judge has no discretion, but must dismiss the suit.

Regional in its declaration stated that it was a corporation of Washington, D. C., with main place of business in Kansas City, Missouri (record page 1), and defendant then filed his motion to dismiss said action on the ground that plaintiff was a foreign corporation and had not complied with Section 613, F. S. A., and in support attached

the statement of the Secretary of State to this effect. From the declaration it appeared that the plaintiff corporation had been doing business in the State and sought to use the courts of the state to enforce its alleged claims, although its charter (Title 12, Section 1148, ...), of which the trial judge was under the federal constitution, required to notice, did not authorize it to transact business in Florida, the Federal Land Bank for Columbia, South Carolina, having sole jurisdiction to do business of this nature in Florida or the Regional incorporated to operate within the area the Columbia bank was authorized to operate or do business in.

Defendant also filed his demand, the plaintiff posted the cost bond required under Section 58.01, F. S. A., served a copy of this demand on the attorney for the plaintiff and at the end of thirty days, no attempt having been made to comply with this condition, moved the trial court to dismiss the action.

Regional took the position that being organized by Congress, it was immune from State laws and not subject to state taxation and these statutes did not apply to it, but offered no proof or law that granted any such immunity and the defendant therefore asked the court to construe its charter and determine if in fact Congress had granted any such immunity or if it had attempted to, if Congress could make any such grant, require the taxpayers of the several states to furnish a free forum for such foreign corporations or make them immune from any reasonable requirements as to conditions precedent to maintain a suit in the state court that other foreign corporations chartered by foreign states had to comply with.

While Regional offered nothing to support this assumption of immunity and the trial court stated no law or facts in its order denying both these motions, it like Regional simply assumed it had such an exemption and ap-

parently the State Supreme Court did also, because in denying the writ it also stated no facts or law, and even failed to do so on the petition for rehearing when the need therefor was expressly pointed out.

However the decision must have been reached on that construction of such immunity, as all the state laws and the Supreme Court's construction of them has always held that a corporation not organized under the laws of Florida is a foreign corporation and that it has to comply with the law and register and pay the tax required as a condition it do business in and use the state courts to enforce claims arising therefrom and unless it has complied, and unless it posts the cost bond within the time required, a trial judge has no discretion but must upon demand of a defendant, dismiss the action.

Since the decision in *McCullough* v. *Maryland,* 4 Wheat. 316, and until Justice Holmes wrote his dissenting opinion in *Panhandle Oil* v. *Mississippi,* 277 U. S. 218, the courts had followed the dictum in the McCullough case and held that such federal corporations were immune for state taxation. However, as Justice Holmes pointed out, not only did the federal constitution not forbid such taxation, but expressly authorized it, that if the government could be destroyed by state taxation, the states could also be destroyed if they were required to afford a place where federal corporations or their employees could ride tax free. This decision was regarded as sound, as a great mass of federal corporations had in late years been chartered and they and their employees were accepting and demanding all the services of the various states, but paying nothing in return therefor.

The adoption of this view caused a reversal of all the earlier cases so that such earlier cases are no authority. *Flint* v. *Stone Tracy,* 220 U. S. 107, was the basis for the Florida Supreme Court reversing all the earlier cases in

Lakeland v. *Ames*, 143 So. 744, in which it cited *Flint* v. *Storey* and held that a municipality acting in a proprietary capacity had to pay the state excise tax for carrying on such a business.

As between the government and the states, the right to tax is now recognized as being reciprocal, if the state furnishes services to the government or its corporations it is entitled to be reimbursed for such expense and the fact the tax may have to be paid by the federal government by indirection, *Alabama* v. *King*, 301 U. S. 1, 140 A. L. R. 615, can make no difference, also *Standard Oil* v. *Lee*, 199 So. 325.

The further well known rule that immunity from taxation is never presumed and if such a claim is made, the claimant has to point to some valid act and prove that it is immune. *U. S. Shipping Board* v. *Sullivan*, 261 U. S. 146.

In *Christie* v. *Highlands*, 153 So. 794, the Florida Supreme Court pointed out that the purpose of Sec. 613, F. S. A., was to require the foreign corporation to pay the excise tax in order to avoid the penalties for its non payment.

The contention of the petitioner is that, in the eye of the Florida law, Regional is a foreign corporation and if it wants to do business in Florida, it must pay the same tax that any other foreign corporation is required to pay, but even if it is not required to pay such excise tax, it has not then qualified to bring a suit in the state court and be immune from posting the statutory cost bond required of such plaintiffs. Most of such compliance acts were based on the theory that if such a foreign corporation wanted to do business in a state and sue to enforce the claims that arose therefrom, it had to also appoint someone as an agent for the service of process upon, so the residents of the state could sue, without pursuing such cor-

porations to the place where their principal place of business is located. Regional takes the position like many other federal corporations that it is immune from suit, in a state in which it does business, *Federal Land Bank* v. *Priddy*, 295 U. S. 229; but those who have claims must sue it where its main place of business is located. There was nothing in its charter that granted any such right and as a matter of equality under the law it could have no such right.

ARGUMENT.

FIRST QUESTION.

Did the trial and appellate court err in holding that Regional was not a foreign corporation and not required to post the cost bond as a condition it maintain a suit in the Florida court?

In order to set the question at rest as to what constituted a foreign corporation, the legislature enacted Sec. 613.07 that provided that if the corporation was organized under the laws of any other state, territory or country, it was a foreign corporation.

The same worded statute was before the court in *Federal Land Bank* v. *Priddy,* 295 U. S. 229, and it was held, the federal corporation was foreign within the meaning of the state law.

In construing the act, the Florida court before the amendment was passed in *Ulmer* v. *First Natl Bank,* 55 So. 408, held that a national bank chartered by Congress was a foreign corporation under this act and it had to qualify before it could bring suits to enforce claims in the state court. Sec. 58.01, F. S. A., provides that a non resident plaintiff shall file a cost bond when suit is instituted and if it fails, and after thirty days notice, is in default, the defendant may move to dismiss the action.

Of course if the plaintiff has qualified to do business and has an agent for service of process appointed, it is not required to post such a bond, but many causes of action arise, where the non resident plaintiff has not been doing business in Florida and yet is permitted to use the state court to enforce its claims. The contention of the petitioner is that Regional was required to post this bond,

even if it did not have to qualify and pay the tax in order to do business, and that was a reasonable requirement that could be exacted from any non resident plaintiff.

23 Amer. Jur. 472, Sec. 485:

> "Since a state has power to require a foreign corporation, seeking relief in its courts to submit to reasonable rules as to giving security for costs, such a rule must be complied with."

The Florida court's construction of this act in *National Net & Twine* v. *Stevens*, 135 So. 509:

> "That if no attempt is made to comply with the act the action is properly dismissed."

14 Amer. Jur. 29, Sec. 44, Note 16:

> "If security for costs is not furnished by the plaintiff on notice from the defendant, the usual remedy; in the absence of any statutory remedy is to move for the dismissal of the action.
>
> The statutory remedy under Sec. 58.01 is to move the action be dismissed. No attempt was made to comply, the plaintiff taking the position it was not required to observe the state law as to securing costs."

SECOND QUESTION.

Did the trial and appellate court err in holding that Regional was not a foreign corporation and required to register, pay the excise tax and appoint an agent upon whom service of process could be made, if it wanted to do business in the state and use its courts to enforce claims that arose from such activities?

Petitioner's contention is that under the laws as now construed, it would make no difference whether a federal

corporation or some agent of the government was acting in either a governmental or proprietary capacity and whether or not the excise tax would eventually have to be paid by the government, if it seeks to avail itself of the state facilities, it has to carry its fair portion of the load that results from providing such services. It may use the roads the state provides, *Standard Oil Co.* v. *Lee,* 199 So. 325, it may or its employees use the municipal facilities, *Graves* v. *New York,* 306 U. S. 466, its agents may use material in the construction of a governmental facility. *Alabama* v. *King,* 314 U. S. 1; or it may own real property, *R. F. C.* v. *Barnett,* 118 F. 2d 190; *U. S.* v. *Brown,* 41 Fed. Supp. 838; but if it wants to come in a state it must pay the same taxes that others similarly engaged are required to pay.

The Arkansas act construed in *Federal Land Bank* v. *Priddy,* 295 U. S. 229, followed the Florida Act, Sec. 613.07, in the same words and held it was a foreign corporation under such act.

As stated in *Rosenberg* v. *U. S. Shipping,* 295 Fed. 376:

> "It is highly desirable that when governmental agencies or corporations, enter into private business they should be subjected to the same liabilities as private corporations similarly employed."

U. S. Shipping Board v. *Sullivan,* 261 U. S. 146:

> "And if they claim immunity from such liability, the burden is on them to show it exists."

Many banks or those interested in inducing farmers to plant more, make similar loans and at the same interest rates, and all this shows is an attempt by the government to move in and take over such private business. If the people want a socialistic or communist form of

government, they have the right to adopt it, but the great complaint today is the government is in private business and if it has such right, it can't expect to not only be furnished with unlimited capital at the taxpayers' expense and then have the further advantage of not having to pay the same excise taxes or be subjected to the state laws as are those with whom it competes.

Sec. 613, F. S. A., does not forbid filing an action by a foreign corporation, to enforce claims that arose from its unlawfully doing business, in the state, without first complying, it simply forbids it *maintaining* the action in the absence of compliance. The Florida court reviewed the purpose of the act in *Hogue* v. *D. L. Morrison Construction Co. of Virginia* in 156 So. 377, 95 A. L. R. 357, and in which it pointed out that the complete bar of the earlier act had been relaxed, but still the action can't proceed until it does comply.

In *Irwin* v. *Gilson*, 158 So. 77, it said:

> "A foreign corporation that has not qualified to do business in this state, *cannot maintain* an action in its courts, and it is reversible error *to deny a motion to dismiss and require the defendant to answer.*"

Hence the order dated September 14th, 1946, overruling the motion to dismiss and requiring the defendant to plead, because the plaintiff had not qualified nor had it posted the cost bond, was reversible error.

Bothwell v. *Buckbee*, 275 U. S. 274.

A state may lawfully require a foreign corporation that has done an intrastate business, to qualify under the statutory provisions for doing business before it sues in its courts, 23 Amer. Jur. 274.

Petitioner therefore claims that under the construction of the state law, the trial and appellate court could

have only reached its decision upon the basis, the plaintiff was immune from state taxes and immune from the laws of the state that applied to non resident plaintiffs.

THIRD QUESTION.

Did the trial and appellate court err in finding that Regional was immune from state taxation or laws and with no proof offer to sustain such a claim and nothing in its charter that granted any such immunity?

Exemption from taxation is never presumed and if claimed, the claimant has to point to some valid statute that grants. In the *Priddy case, supra,* the Federal Land Bank was held to be a foreign corporation, in the Ulmer case, the Florida court held the bank was a foreign corporation and had to comply before it could maintain a suit in the state court.

In *McAllister* v. *Drapeau,* 85 Pac. 2d 523, it was held HOLC was in the eye of the law a private corporation.

The Minnesota court dismissed the action of *Union Brokerage Co.,* 322 U. S. 1072, for noncompliance, regardless of the fact it claimed it had a license from the federal government to carry on its business. This court recognized that doing business in a state, imposed costs upon the state and such costs must be paid.

Clyde Mallory v. *Alabama,* 296 U. S. 261.

It costs money to maintain courts and pay jurors and which the filing fees in no way cover. There is no more reason why such corporations should expect to use without payment, the state courts, than the government should expect federal contractors to be furnished free use of the roads, or its employees to enjoy the use of the state facilities without contributing anything towards their cost. There can be no hair line distinction; if the use of such facilities puts a burden on the state or municipality, then the govern-

ment or its corporations, agents or employees have to bear their share.

Cohen v. *Virginia*, 6 Wheat. 264:

> "A corporation, created by federal law, for local purpose and with powers designed to be exercised *within specified territorial limits*, if it can lawfully exercise its powers outside of such limits, *must do so subject to the laws* of the state in which the acts are done."

Bank of Augusta v. *Earle*, 13 Pet. 516:

> "If a corporation is limited to a definite territorial area by its charter, any contracts entered into outside such area are void."

This court rejected the contention of the appellants in *Hopkins Federal Savings & Loan* v. *Cleary*, 56 S. Ct. 235, 100 A. L. R. 1405, that Congress could by a law authorize corporations chartered by a state, to evade state supervision and laws by adopting a federal charter. What it can't do by direct action it can't accomplish by indirection and Congress has never in any way suggested that the plaintiff was immune from state taxation or the laws of the state in which it does business. On the other hand, Florida held in the Ulmer case that a corporation chartered by Congress was a foreign corporation in Florida and it had to obey the laws of that state and qualify before it could maintain a suit in its courts.

There is no practical difference between Regional Farm Credit Districts and Regional Agricultural Credit Corporations, the first are organized under Title 12, Section 640, both stem from the same parent, one loans on real property and the other on chattel mortgage, both are confined to specified territorial limits, both are subject to the laws of the state within which they operate, but neither's charter authorizes them to bring a suit to recover

money. Both are subsidiaries of the R. F. C. which is a corporation organized for profit, wholly owned by the United States and claims through its operations it makes millions of dollars, acting in a proprietary capacity and in competition with private business.

Such federal corporations are not immune from taxation nor from control by the state in which they do business.

R. F. C. v. *Barnett,* 118 F. 2d 190, held the parent was liable for state taxation; *U. S.* v. *Brown,* 41 Fed. Supp. 838 (Florida), held the R. A. C. C. was liable for state taxes.

North Dakota Wheat Growers v. *U. S.,* 66 F. 2d 573, was a suit by the United States to recover money loaned by a Federal Land Bank, a subsidiary of the R. F. C. and under the real party at interest statute it was held the Farm Board could not have maintained a suit in its own name for money loaned the defendant, but here Regional is attempting to maintain a suit in its own name regardless of the fact nothing in its charter authorizes.

FOURTH QUESTION.

Did the trial and appellate court err in holding that Regional was authorized to do business in Florida or sue in the state court to enforce the claims that arose by reason of its unlawful acts?

Section 613.11 makes it a criminal offense for a foreign corporation to come into Florida and do business without having first qualified.

23 Amer. Jur. 145, Sec. 144, 69 A. L. R. 134.

The domicile of a federal corporation is the place where its *principal place of business is located.*

The declaration alleges that Regional's main place of business is Kansas City, Missouri. While neither court

made any express ruling on the question, that was before them, the only possible inference is, that in denying the motions to dismiss, the ruling was based on the presumption, that this plaintiff did not have to comply or furnish a bond, because it was a corporation chartered by Congress, as in all other cases it has been consistently held, that a foreign corporation must comply, but the rule is stated in 23 Amer. Jur. 243:

> "A state is not precluded from the exercise of normal powers over a foreign corporation, merely because it is chartered by Congress."

The fact cannot be overlooked that the main reason for such so-called incentive loans, was due to the many different government agencies and corporations whose activities and rules so circumscribed a farmer that he had no other source of credit open. Having created the situation, Regional, in behalf of the government came into Florida and did business. War Production Board told him what kind of a container he could use, ODT came along and told him how much he should load in a car and that he couldn't have ice although the shipment was perishable and then after he had planted, OPA came along and could tell him in advance, what his cost to produce and harvest his crop would be and set a price upon it, and under threats of fines and imprisonment he was forced to observe such price. The result was that the government took the crop at its own price or if it was sold to the public consumers, it was sold for less than the cost to produce it and in turn the farmer either had to subsidize the government or the consumer, all depending upon who obtained his product. His usual private source of credit having been so destroyed, Regional then moved in and usurped this business. It is difficult to see how if the private corporations that did this business had to pay such taxes,

why a federal corporation acting in a proprietary capacity would not have to pay the same tax. To rule otherwise would be to require the man who is to be beheaded to furnish the ax and the executioner.

To claim a state cannot make such reasonable rules under its police power or require a federal corporation, that wants to obtain the benefits of the services the state maintains, to pay the same excise tax private corporations in similar activities are required to pay, that are chartered by the various states, is in violation of the Tenth Amendment.

State v. *Panhandle Oil*, 112 So. 584:

> "The states have the power to tax the privilege of carrying on business and the fact that the government may be indirectly benefited does not make the tax unlawful." Citing *Metcalf* v. *Mitchell*, 269 U. S. 514.

Standard Oil v. *Lee*, 199 So. 325:

> "The test of the validity of a privilege or excise tax, is not whether it is laid directly on the United States or one of its governmental agencies, but whether or not in the way it is laid, it directly retards, impedes or burdens the United States in the exercise of its constitutional powers."

But the rule is still stronger when a federal corporation acting in a proprietary capacity claims immunity for such a tax. The constitution does not forbid a state from requiring a federal corporation to pay the same excise tax as corporations not so chartered are required to pay, as a privilege for doing business in such states or using its courts to enforce claims that arose in such states nor to submit to such reasonable rules as to insure payment of the costs in the actions they bring. Such charges are just as much a cost of their doing business as are the salaries

or rent they pay. Is the state also required to furnish them with rent free accommodations under the claim that to charge rent would put a burden on the government. The claims of their employees, landlords or contractors that to tax the property rented to the government, or the wages of the employees or the materials the contractor purchases is in effect an indirect tax on the government. If the employee was not required to pay the tax, he could work for less, if the landlord was exempt from taxes he could rent his property for less and therefore all such services should be rendered by the states gratis. Whether the service furnished by the state is the use of its roads, police protection or the use of its courts can make no difference, because the great mass of these federal corporations were crushing the states or the taxpayers that furnished such facilities.

Petitioner therefore contends that the trial court erred in denying his motion to dismiss and requiring him to answer before the plaintiff had complied and paid the privilege tax, and it also erred in refusing to dismiss the action, when the plaintiff refused to comply and furnish the cost bond and the appellate court erred in affirming such ruling and the case should be reversed and remanded and returned to the trial court with instructions to dismiss said action.

Respectfully submitted,

T. T. OUGHTERSON,
Attorney for Petitioner.

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CLERK

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 552.

STATE OF FLORIDA EX REL. CARROLL DUNSCOMBE, PETITIONER,

VS.

HONORABLE A. O. KANNER, AS JUDGE OF THE CIRCUIT COURT FOR MARTIN COUNTY, FLORIDA, RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA.

REPLY BRIEF OF PETITIONER

and

~~**PETITION ON REHEARING ON ORDER DENYING**~~ **PETITION FOR REHEARING.**

T. T. OUGHTERSON,
Stuart, Florida,
Attorney for Petitioner.

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REPLY BRIEF OF PETITIONER.

The respondent in his reply brief suggests the remedy to forbid a trial court in proceeding where the law says; it shall not; is adequate by going to the expense of defending the case and taking a lot of testimony and then determine by appeal if the court had any jurisdiction to proceed after noncompliance with the conditions precedent

had been brought to the attention of the court and the nonresident plaintiff had refused to obey the law.

In order to support this contention the respondent cites *State ex rel. Lynch* v. *Circuit Court*, 159 So. 883, 118 Fla. 507.

The record in that case shows that the action was started before the law restricting such suits had been passed, but that before the court permitted the plaintiff to proceed it corrected the default and got its receipt from the Secretary of State that it had complied and therefore the trial court could not have erred in allowing the suit to proceed.

The Florida Supreme Court went into that very question shortly before then in *Hogue* v. *Morrison*, 156 So. 377, 95 A. L. R. 357, and pointed out the statute did not forbid filing the suit, the law was it could not maintain it in the absence of compliance. This is a default a defendant can waive, but when the failure to post the cost bond or pay the excise tax is called to the court's attention, the law is that the action *cannot further proceed* and this restriction applies to the judge, and as stated in *Irwin* v. *Gilson*, 158 So. 77, the court can't require a defendant to plead while the nonresident plaintiff is in default and if no attempt is made to comply, the action is properly dismissed.

As the *Hogue* v. *Morrison* case points out, that is the penalty for noncompliance.

These are simply conditions precedent to entitle a foreign corporation to maintain an action over the objection of a defendant when, as in this case, it is raised; the action abates pending the 30 day period for compliance and if at the end of such time no attempt has been made, the law requires the court to dismiss the action.

1 Amer. Jur. 20, Sec. 13:

> "The question of a corporation's legal disability should be raised by plea or motion as local practice prescribes."

Sec. 58.01 provides for a motion to dismiss upon failure to comply.

In fact the action abates during this period and when that has passed, the trial court loses all jurisdiction to do other than dismiss for refusal to comply.

17 Amer. Jur. 84, Sec. 48, Note 3.

If at any stage of the proceedings it is made to appear the court has no jurisdiction of the subject matter the court should dismiss it.

42 Amer. Jur. 162, Sec. 25.

Jurisdiction that once has confessedly attached may subsequently terminate and when this happens the court is as destitute of jurisdiction as if it never existed.

The facts in *Federal Land Bank* v. *Priddy,* 295 U. S. 229, were very similar. In that case the defendant claimed the trial court was without jurisdiction, the court denied the suggestion and prohibition was taken to forbid the exercise of such jurisdiction and it was not suggested that the petitioner had an adequate remedy by waiting until a final judgment to take an appeal to determine that question, but this court granted certiorari to review. The same worded statute as to what constituted a foreign corporation was before the court in that case and the courts of that state had construed it in the same manner as had the Florida Supreme Court in the case now before the court. It held it was a foreign corporation and the law of Florida is that a trial court has no jurisdiction to proceed where the noncompliance is called to its attention and the default not corrected.

Crill v. *State Road Department,* 117 So. 795, cited by the respondent was not based on any law forbidding prosecution of that action nor on any holding that the act under which the plaintiff proceeded was unconstitutional. What

was attempted was to have the trial court determine the constitutionality of the act upon which the right to base the pending action, in the absence of any showing that the Supreme Court had found it to be unconstitutional. But the Florida Supreme Court has determined that a foreign corporation can't prosecute its action over the objections of a defendant until it has complied so that case in no way supports the respondent.

Curtis v. *Albritton,* 132 So. 677, likewise fails to support. In that case the bank had been sued for a sum claimed by two different parties and as usual, it filed an interpleader and paid the money into court and asked the claimants settle their rights in that action. The defendant had an ample remedy in the interpleader to prove his superior claim to the money and as the 17th and 18th headnote points out the jurisdiction of the judge to determine the issues in the interpleader action was not questioned. No one suggests that the defendant in that action could not have had his rights determined in that action or that the judge was not authorized to try it, but you have an entirely different situation where the law forbids a judge from proceeding with an action and where his right to do so is questioned. The court had already held in the *Hogue* v. *Morrison* case that a trial court was without jurisdiction to permit the further prosecution of such a claim.

42 Amer. Jur. 165, Sec. 29:

> "A writ of prohibition may issue where the petitioner has no other adequate remedy, although the judge may be acting within his *technical* jurisdiction in hearing and determining the case."

Many situations arise where a court may have jurisdiction of the subject matter or parties but for some reason may have lost it or be estopped to go into that particular matter.

He may be disqualified but refuse to admit it, *State* v. *McAllister*, 214 S. W. 85, 8 A. L. R. 1226; 136 A. L. R. 731, or the defendant may have been enticed into the state in order for process be served upon him. *State* v. *District Court*, 33 Pac. 2d 526, 93 A. L. R. 865, or from any one of a great number of reasons he may either lack jurisdiction or it be improper he attempt to exercise it in the particular matter then before him.

If as in the *Lynch case*, 159 So. 883, the plaintiff had corrected the default, there could be no question that the trial court had jurisdiction to proceed but if as in this case the plaintiff refused to comply there would be no purpose of passing the law that forbids further prosecution, if trial courts are not going to enforce that law when its attention is called to the breach.

The law does not forbid filing the action, it forbids the court permitting the noncomplier from proceeding with his action while in default.

No attempt has been made in the reply brief to show that in such cases the nonresident corporate plaintiff is entitled to maintain its action under such circumstances and there are no cases that so hold, nor is any authority stated that permits a circuit judge to allow the action to proceed and require the defendant to plead or answer over his objections in the face of its noncompliance, and there are none.

Nor does the respondent cite any authority that shows that if the law forbids further prosecution in the absence of noncompliance the trial judge can disregard the law and permit the action to proceed, or that a defendant in such a case can be required to go to a lot of time and expense and then must wait until some final judgment is rendered and take an appeal to ascertain if the trial judge had no jurisdiction to allow the action to be prosecuted and was in fact permitting the plaintiff to break the law.

Want of jurisdiction is always good grounds for prohibition, because a defendant is entitled to have that question determined at the outset and does not have to wait for a final judgment and take an appeal to determine. If as in the Leach case, it appears from the record the court has jurisdiction to proceed and that opinion points out there is no defect, both parties then know any judgment will be valid as far as the right of the court to make it is concerned.

The reply brief in substance admits all the petitioner claims but cites no law or authority to show why he was not entitled to the relief he sought.

Respectfully submitted,

T. T. OUGHTERSON,
Stuart, Florida,
Attorney for Petitioner.

MOTION TO STRIKE.

Comes now the petitioner by his undersigned attorney, and moves to strike the alleged order of W. I. Myers from the reply brief of the respondent, said order being dated September 30th, 1937, and appearing on pages 10-13 of said reply brief and on the following grounds:

1. That said alleged order is not properly attested to be entitled to introduction into evidence, even had it been offered in the trial court.

2. That it does not appear said alleged order is part of the record in this cause or was ever before the trial or appellate court.

3. That it attempts to make this court one of original jurisdiction to determine a question that was never before the court below and as such, fails to provide for due process of law.

4. Article Six of the United States Constitution requires judges of the several state courts to take judicial notice of the Constitution and the laws and treaties of the United States but does not require them to take judicial notice of orders or rules of Federal corporations and if the plaintiff wanted the benefit of any such rule or order its duty was to offer it before the trial court and allow the defendant to attack its validity or show it was in fact no longer in effect.

T. T. OUGHTERSON,
Stuart, Florida,
Attorney for Petitioner.

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 552.

STATE OF FLORIDA EX REL. CARROLL DUNSCOMBE, PETITIONER,

VS.

HONORABLE A. O. KANNER, AS JUDGE OF THE CIRCUIT COURT FOR MARTIN COUNTY, FLORIDA, RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA.

PETITION ON REHEARING ON ORDER DENYING PETITION FOR REHEARING.

Comes now the petitioner by his undersigned attorney and respectfully moves the court to grant him a rehearing of its order denying certiorari of the decision rendered in this cause and for the following reasons:

1. The laws of Florida forbid a trial judge to permit an action by a nonresident corporation, that is in default for paying the required excise tax or posting the cost bond, to proceed over the objections of the defendant.

2. That in the action before the court, the trial judge was without jurisdiction to permit further prosecution of said action and therefore prohibition was the proper remedy.

3. The case cited by the respondent in order to support the unlawful requirement the defendant plead; by the recitals therein stated; shows that the foreign corporation had complied with the law and paid the required tax and therefore the trial court would have erred had it refused to permit the action to proceed.

4. No law or authority has been cited that permits a nonresident corporation that has failed to pay the stock tax or post the required cost bond, to proceed in its action over the objection of the defendant.

5. No law or authority has been cited that shows the plaintiff in the action complained of was exempt from the same obligations as those it competes with are required to perform.

6. That the matter was determined before the petitioner could have his reply brief printed and call these matters to the attention of the court and therefore petitioner asks leave of the court to support this petition by the reply brief he had prepared and intended to file, before the matter was determined.

T. T. OUGHTERSON,
Stuart, Florida,
Attorney for Petitioner.

I, T. T. Oughterson, hereby certify that the foregoing petition is filed in good faith and not for the purpose of delay and said petition is restricted to the grounds therein stated.

.....

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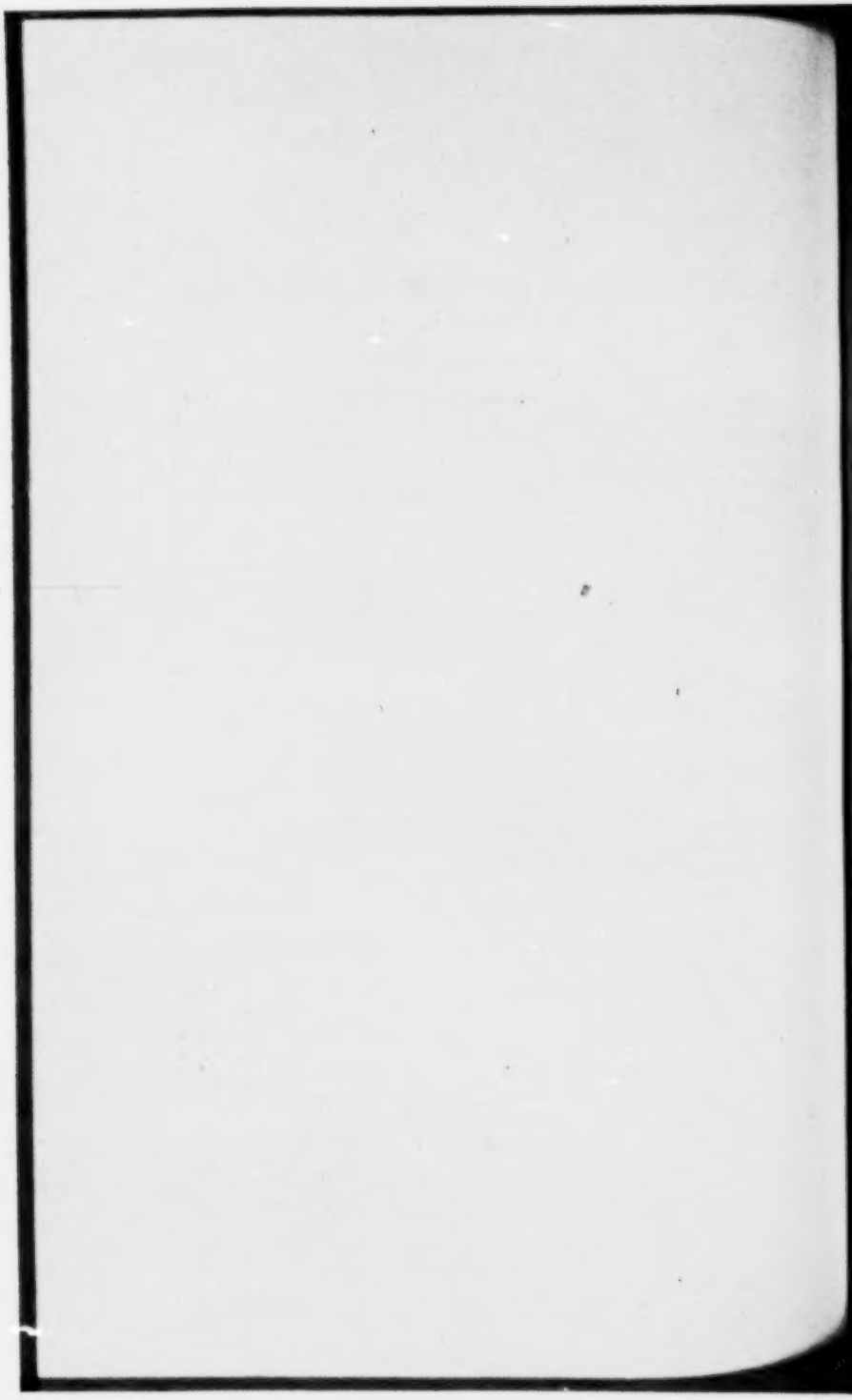

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 552

STATE OF FLORIDA, EX REL. CARROLL DUNSCOMBE, PETITIONER

v.

HONORABLE A. O. KANNER, AS JUDGE OF THE CIRCUIT COURT FOR MARTIN COUNTY, FLORIDA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The Supreme Court of Florida has not issued an opinion, and the order of the court (R. 8) has not been reported.

JURISDICTION

The order of the court below was entered on November 17, 1947 (R. 8). A petition for rehearing was denied on November 24, 1947 (R. 10). The petition for a writ of certiorari was filed on January 28, 1948. The jurisdiction of

this Court is invoked under section 237 (b) of the Judicial Code, as amended (28 U. S. C. 344 (b)).

QUESTION PRESENTED

Whether an order of the Supreme Court of Florida denying a petition for a writ of prohibition is reviewable by this Court, where the order was not accompanied by an opinion and could have been based upon a controlling, non-Federal requirement of local practice.

STATUTES AND ORDERS INVOLVED

The State statutes involved are Title 6, Florida Statutes Annotated, sections 80.05 through 80.12, which govern the practice and procedure to be followed in the courts of Florida in prohibition proceedings (relevant portions of the statute are set forth in the Appendix, pages 9–10); section 58.01, Florida Statutes of 1941, which requires a non-resident plaintiff to file a cost bond in order to maintain an action in a State court; and chapter 613, Florida Statutes of 1941, which prescribes the requirements for doing business in the State by foreign corporations.

The Federal statute and orders involved are Title 12, United States Code, sections 1148–1148d (47 Stat. 713; 48 Stat. 273; 50 Stat. 704, 710, 717), which provide for the creation of Regional Agricultural Credit Corporations; Executive Order No. 6084 dated March 27, 1933 (preceding 12 U. S. C. 636), which vested control over such corporations in the Farm Credit Administration;

and Order No. 202 of the Farm Credit Administration dated September 30, 1937, which created the Regional Agricultural Credit Corporation of Washington, D. C. (relevant portions of the order are set forth in the Appendix, pages 10–13).

STATEMENT

This action was commenced by the petitioner in the Supreme Court of Florida by a petition for a writ of prohibition forbidding the respondent, as Judge of the Circuit Court of Martin County, Florida, from entertaining further an action at law now pending before him (R. 1–2).

The action at law pending before the Circuit Court of Martin County, Florida, was commenced by the Regional Agricultural Credit Corporation of Washington, D. C., to collect from the petitioner an indebtedness evidenced by a promissory note (R. 3–5). The Regional Agricultural Credit Corporation of Washington, D. C., is a wholly Federally-owned corporation chartered by the Farm Credit Administration (Order No. 202, dated September 30, 1937, Appendix, pages 10–13), pursuant to the provisions of 12 U. S. C. 1148–1148d, for the purpose of making loans to farmers and stockmen. The petitioner filed a demurrer and several motions to dismiss the action on the grounds: (1) That the Regional Agricultural Credit Corporation of Washington, D. C., does not have corporate authority to sue, and (2) that the Regional Agricultural Credit Corporation of

Washington, D. C., is not authorized to maintain the action in the State court because it has not filed the cost bond required of non-resident plaintiffs by section 58.01, Florida Statutes of 1941, and has not met the requirements for doing business in Florida required of foreign corporations by chapter 613, Florida Statutes of 1941. The respondent judge denied the motions, overruled the demurrer, and allowed the petitioner the customary time within which to file his pleas. (R. 6–8.)

The petitioner thereupon commenced this action by petitioning the Supreme Court of Florida to issue a rule nisi, directed to the respondent in his capacity as Judge of the Circuit Court for Martin County, Florida, requiring him to show cause why a writ of prohibition should not issue. The respondent, through counsel, resisted the petition upon the ground that the petitioner had not made out a prima facie case. The Supreme Court of Florida denied the petition and later denied a petition for rehearing (R. 8, 10).

As the court refused to issue a rule nisi, the respondent was not required to file a return in that court and the ground upon which the petition for the writ of prohibition was successfully resisted does not appear in the record. Furthermore, the court's orders were entered without opinion and the grounds upon which the court based its refusal to grant the petition likewise do not appear in the record.

ARGUMENT

Since the order of the Supreme Court of Florida denying the petition for a writ of prohibition was not accompanied by an opinion, it is impossible to determine from the record the basis for the court's action. The order could have been based solely upon the requirements of local practice in prohibition proceedings, independently of any Federal question in the case. In such circumstances, it is clear that this Court will not take jurisdiction. *Cuyahoga River Power Company* v. *Northern Realty Company,* 244 U. S. 300; *Allen* v. *Arguimbau,* 198 U. S. 149.

The practice in prohibition proceedings in the Florida courts is prescribed by statute. After providing for the filing of a suggestion for prohibition, stating the nature of the case and describing the proceedings in the inferior court sought to be prohibited, the Florida statute states that the court shall, if it finds that a prima facie case has been made, grant a rule directed to the lower court and to the adverse parties in the suit therein pending to show cause why the writ should not issue. Under the decisions of the Supreme Court of Florida, a writ of prohibition is never granted as a matter of right, but is an extraordinary judicial process employed to restrain the unlawful exercise of judicial functions in the absence of an adequate remedy at law. *Burkhart* v. *Circuit Court of Eleventh Judicial Circuit,* 146 Fla. 457, 1 So. 2d 872. The writ is

restricted to the field for which it was intended and is not allowed to become a vehicle for the determination of questions involving the correct or incorrect decision of a lower court that had authority to act in the premises. *Adams* v. *Lewis,* 146 Fla. 177, 200 So. 852. Its proper function is to confine lower courts, in the exercise of their powers, within the limits fixed by law, and is not allowed to usurp the office of a writ of error or an appeal. *State ex rel. Rheinauer* v. *Malone,* 40 Fla. 129, 23 So. 575; *Crill* v. *State Road Department,* 96 Fla. 110, 117 So. 795. A distinction is recognized between the assumption of a jurisdiction to which the court has no legal claim, and the mere erroneous exercise of a jurisdiction with which the court is vested, *Burkhart* v. *Circuit Court of Eleventh Judicial Circuit, supra;* and where the lower court had authority to decide the matter in dispute, a writ of prohibition will not lie even though the decision of the lower court may have been erroneous. *State ex rel. Park* v. *H. T. Poindexter & Sons Merchandising Company,* 149 Fla. 765, 7 So. 2d 452; *State ex rel. Schwarz* v. *Heffernan,* 142 Fla. 137, 194 So. 313.

A petition for a writ of prohibition was presented to the Supreme Court of Florida in its original jurisdiction in *State ex rel. Lynch* v. *Circuit Court of Eleventh Judicial Circuit in and for Dade County,* 118 Fla. 507, 159 So. 883, to require the lower court to dismiss a proceeding brought by the Eastern Hotel Corporation. The petition was

based upon the fact that the corporation had failed to comply with the statutes of Florida requiring the filing of an annual report with the Secretary of State and the payment of an annual excise tax. The lower court had denied the motion to dismiss for that reason. In dismissing the petition for writ of prohibition, the Supreme Court of Florida said:

> As the court had jurisdiction to determine the motion to dismiss the action for failure of the plaintiff corporation to comply with the statute and as the motion affected not the jurisdiction of the court to proceed further in the cause but the right of the plaintiff corporation to maintain the action because of its failure to comply with the statute, the writ of prohibition is not the proper remedy. If the court erred in denying the motion, a remedy is by writ of error to a final judgment in the cause.

The rule stated in the *Lynch* case is applicable to the facts in the present proceeding, and provides an adequate non-Federal basis for the court's order. No contention was made in the Supreme Court of Florida, and none is made here, that the Circuit Court of Martin County, Florida, lacked jurisdiction to hear and determine the matter upon which it passed. The sole objection is that it determined the matter incorrectly. The proper remedy under the Florida decisions is by appeal in the pending action at law.

The petitioner asserts (Pet. 5) that the Supreme Court of Florida held that, because of its status as a Federal instrumentality, the Regional Agricultural Credit Corporation of Washington, D. C., is not a foreign corporation, is not required to qualify to do business in the State before using the State courts, is not required to file a cost bond required of non-resident plaintiffs, and is immune from State taxation. The difficulty, however, is that the Supreme Court of Florida made no finding with respect to the Federal issues stated by the petitioner, and its order can be fully sustained on the basis of the Florida practice in prohibition proceedings.

CONCLUSION

The decision sought to be reviewed can rest on an adequate non-Federal ground. Accordingly, it is respectfully submitted that the petition for a writ of certiorari should be denied.

PHILIP B. PERLMAN,
Solicitor General.

JAMES A. DOYLE,
Associate Solicitor,

LEWIS A. SIGLER,
Assistant Associate Solicitor,
Department of Agriculture,

ARTHUR W. HOLLER, JR.,
Assistant General Counsel,
Farm Credit Administration of
Columbia, S. C.

FEBRUARY 1948.

APPENDIX

Chapter 3002, Section 2, Florida Laws of 1877, as amended, codified as Title 6, Florida Statutes Annotated, sections 80.05 through 80.12:

80.05 *Prohibition; practice and proceedings.*—The practice in the courts of this state having jurisdiction to issue writs of prohibition shall be as set forth in §§ 80.06–80.12.

80.06 *Suggestion for prohibition.*—The plaintiff or plaintiffs shall file a suggestion stating the nature of the case, and the proceedings in the inferior court, tribunal or body presuming to exercise jurisdiction, sought to be prohibited, concluding with a prayer for judgment, and that the state's writ of prohibition may be granted in that behalf. When the matters suggested appear upon the face of the proceedings in the inferior court, then the transcript of the record of all the proceedings in the case, duly certified, shall accompany the suggestion, and where the matters suggested are not matters of record, then the truth thereof shall be verified by affidavit of the party instituting the proceedings or of his agent, or attorney at law, or in fact.

80.07 *Prohibition; rule nisi; issuance; service; etc.*—Upon the filing of the suggestion, the court, if in its judgment a prima facie case is made, shall grant a rule directed to the inferior court and to the parties plaintiff in the suit therein pending to show cause why the writ of prohibition should not issue as prayed for. Such rule

shall be a supersedeas, and shall be served upon the inferior court and the parties to whom it is directed at such time as the court may direct, and an answer or return shall be made thereto by the inferior court and the parties at the time prescribed in the rule. In case of failure to make such answer or return, it may be enforced by attachment for contempt.

SEPTEMBER 30, 1937.

FARM CREDIT ADMINISTRATION ORDER NO. 202

Subject: Consolidation of Regional Agricultural Credit Corporations of Albany, New York; Baltimore, Maryland; Raleigh, North Carolina; Columbus, Ohio; Jackson, Mississippi; and St. Louis, Missouri; Grant of Charter to Regional Agricultural Credit Corporation of Washington, D. C.

WHEREAS, authority is vested in the Farm Credit Administration by the Farm Credit Act of 1937 to order and effect the consolidation of two or more regional agricultural credit corporations on such terms and conditions as it shall direct and to grant charters to, prescribe bylaws for, and fix the capital of regional agricultural credit corporations which may be formed by such consolidations; and

WHEREAS, I, as Governor of the Farm Credit Administration, have found that the consolidation of the following named regional agricultural credit corporations (hereinafter called the "constituent corporations"):

Regional Agricultural Credit Corporation of Albany, Albany, New York.

Regional Agricultural Credit Corporation of Baltimore, Baltimore, Maryland.

Regional Agricultural Credit Corporation of Raleigh, Raleigh, North Carolina.

Regional Agricultural Credit Corporation of Columbus, Columbus, Ohio.

Regional Agricultural Credit Corporation of Jackson, Jackson, Mississippi.

Regional Agricultural Credit Corporation of St. Louis, St. Louis, Missouri.

into one corporation will effect a more efficient and economical administration of the business heretofore conducted by such constituent corporations,

NOW, THEREFORE, it is hereby ordered:

1. That the constituent corporations be and they hereby are consolidated into one corporation to be known as the "Regional Agricultural Credit Corporation of Washington, D. C.", which shall have all the rights, powers, authority and exemptions, shall be subject to the same supervision and control, and shall have its expenses paid in the same manner as provided by law in respect to the constituent corporations.

2. That there be and hereby is granted to the Regional Agricultural Credit Corporation of Washington, D. C., the following charter:

CHARTER OF THE REGIONAL AGRICULTURAL CREDIT CORPORATION OF WASHINGTON, D. C.

"1. The name of this corporation shall be 'Regional Agricultural Credit Corporation of Washington, D. C.' and its principal office shall be in the City of Washington, District of Columbia.

"2. The authorized capital of the said corporation shall be Fifteen Million Dollars

($15,000,000), of which the amount initially issued shall be $250,000. The authorized capital and/or the amount thereof outstanding may be increased or decreased from time to time by the Governor of the Farm Credit Administration.

"3. The corporation, formed by the consolidation of the Regional Agricultural Credit Corporations of Albany, Albany, New York, of Baltimore, Baltimore, Maryland, of Raleigh, Raleigh, North Carolina, of Columbus, Columbus, Ohio, of Jackson, Jackson, Mississippi, and of St. Louis, St. Louis, Missouri, is authorized and empowered to have and exercise all the rights, powers, authority, and exemptions and to do and perform all acts and transact all business which legally may be had or done by regional agricultural credit corporations under and in accordance with the Emergency Relief and Construction Act of 1932, approved July 21, 1932, the Farm Credit Act of 1933, approved June 16, 1933, and the Farm Credit Act of 1937, approved August 19, 1937, as they exist or may be amended.

"4. Without in any wise limiting the generality of the foregoing, the corporation shall have power

(a) to acquire and dispose of such property, real and personal, as may be necessary or convenient for the transaction of its business, which, however, may be leased to others for revenue purposes,

(b) to adopt and use a corporate seal.

"5. The corporation shall be managed by officers and agents appointed by the Farm Credit Administration under such rules and regulations and in accordance with such bylaws as the Farm Credit Administration may from time to time prescribe.

"6. This charter may be amended from time to time by the Farm Credit Administration.

"IN WITNESS WHEREOF, I, W. I. Myers, Governor of the Farm Credit Administration have hereunto set my hand and caused the seal of the Farm Credit Administration to be affixed this 30th day of September, 1937.

"W. I. MYERS,
"Governor of the Farm Credit Administration.

"ATTEST:
"[SEAL] W. S. HINMAN,
"Chief Clerk."

* * * * *

The provisions of this order shall be effective as of the close of business on the date first above written and shall remain in full force and effect until amended or revoked by subsequent order.

W. I. MYERS,
Governor, Farm Credit Administration.

U. S. GOVERNMENT PRINTING OFFICE: 1943